



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R04-OAR-2022-0506; FRL-9895-01-R4]**

**Finding of Failure To Submit a Clean Air Act Section 110**

**State Implementation Plan for Interstate Transport**

**for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final action.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action, finding that the State of Alabama failed to submit a complete infrastructure State Implementation Plan (SIP) revision to satisfy certain interstate transport requirements of the Clean Air Act (CAA or Act) with respect to the 2015 8-hour ozone national ambient air quality standards (NAAQS).

Specifically, these requirements pertain to prohibiting significant contribution to nonattainment, or interference with maintenance, of the 2015 8-hour ozone NAAQS in other states. This finding of failure to submit a complete revision establishes a 2-year deadline for EPA to promulgate a Federal Implementation Plan (FIP) to address these interstate transport requirements for Alabama unless, prior to EPA promulgating a FIP, Alabama submits, and EPA approves, a SIP that meets these requirements.

**DATES:** Effective date of this action is **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2022-0506. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials can either be retrieved electronically via [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Evan Adams of the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Adams can be reached by telephone at (404) 562-9009, or via electronic mail at [adams.evan@epa.gov](mailto:adams.evan@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Notice and Comment Under the Administrative Procedure Act (APA)**

Section 553 of the APA, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this final agency action without prior proposal and opportunity for comment because no significant EPA judgment is involved in making a finding of failure to submit SIPs, or elements of SIPs, required by the CAA, where states have made no submissions or incomplete submissions, to meet the requirement. Specifically, and as discussed further in the preamble, Alabama has withdrawn a prior submission and has not made a complete submission under CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. Thus, notice and public procedure are unnecessary. EPA finds that

this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

## **II. Background and Overview**

### *A. Interstate Transport SIPs*

CAA section 110(a) imposes an obligation upon states to submit SIP revisions that provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within 3 years following the promulgation of that NAAQS. CAA section 110(a)(2) lists specific requirements that states must meet in these SIP submissions, as applicable. EPA refers to this type of SIP as an “infrastructure” SIP because it ensures that states can implement, maintain, and enforce the new or revised air standards. Within these requirements, CAA section 110(a)(2)(D)(i) contains requirements to address interstate transport of NAAQS pollutants. A SIP for this sub-section is referred to as an “interstate transport SIP.” In turn, CAA section 110(a)(2)(D)(i)(I) requires that such a plan contain adequate provisions to prohibit emissions from the state that will contribute significantly to nonattainment of the NAAQS in any other state (“prong 1”) or interfere with maintenance of the NAAQS in any other state (“prong 2”). Interstate transport prongs 1 and 2, also called collectively the “good neighbor” provision, are the requirements relevant to this action.

Pursuant to CAA section 110(k)(1)(B), EPA must determine within 60 days of receipt, but no later than 6 months after the date by which a state is required to submit a SIP revision, whether a state has made a submission that meets the minimum completeness criteria established pursuant to CAA section 110(k)(1)(A). These criteria are set forth at 40 CFR part 51, appendix V. EPA refers to the determination that a state has not submitted a SIP submission that meets the minimum completeness criteria as a “finding of failure to submit.” If EPA finds a state has failed to submit a SIP revision to meet its statutory obligation to address CAA section 110(a)(2)(D)(i)(I), then pursuant to CAA section 110(c)(1), EPA has not only the authority, but the obligation, to promulgate a FIP within 2 years to address the CAA requirement. This finding, therefore, starts a 2-year “clock” for promulgation by EPA of a FIP, in accordance with

CAA section 110(c)(1), unless prior to such promulgation the state submits, and EPA approves, a revision from the state to meet the requirements of CAA section 110(a)(2)(D)(i)(I). Even where EPA has promulgated a FIP, EPA will withdraw that FIP if a state submits, and EPA approves, a SIP satisfying the relevant requirements. EPA notes that this action does not start a mandatory sanctions clock pursuant to CAA section 179 because this finding of failure to submit does not pertain to a part D plan for nonattainment areas, required under CAA section 110(a)(2)(I), or a SIP call pursuant to CAA section 110(k)(5).

*B. Background on 2015 Ozone NAAQS, Alabama SIP Revisions, and Incompleteness Determination*

On October 1, 2015, EPA promulgated a new 8-hour primary and secondary ozone NAAQS of 70 parts per billion (ppb), which is met when the 3-year average of the annual fourth highest daily maximum 8-hour concentration does not exceed 70 ppb.<sup>1</sup> Pursuant to the 3-year period provided in CAA section 110(a)(1), infrastructure SIP revisions addressing the revised standard were due on October 1, 2018.<sup>2</sup>

On August 20, 2018, Alabama submitted a SIP revision to address the interstate transport requirements for the 2015 8-hour ozone NAAQS. On February 22, 2022, EPA proposed to disapprove Alabama's August 20, 2018, SIP revision because the Agency preliminarily determined, based on updated EPA modeling, that Alabama's SIP revision did not meet CAA requirements to contain the necessary provisions to eliminate emissions that will contribute significantly to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.<sup>3</sup> *See* 87 FR 9545.

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<sup>1</sup> *See* Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (October 26, 2015).

<sup>2</sup> EPA previously made findings of failure to submit with respect to interstate transport obligations for the 2015 8-hour ozone NAAQS for a number of other states. *See* 84 FR 66612 (December 5, 2019). As discussed further in this notice, at the time EPA made those findings, Alabama had provided a complete submission, which it has subsequently withdrawn.

<sup>3</sup> Previously, EPA proposed approval of Alabama's August 20, 2018, interstate transport SIP submission for the 2015 8-hour ozone NAAQS based on modeling released in 2018. *See* 84 FR 71854 (December 30, 2019). However, based on new modeling released in 2020, it became evident that Alabama was projected to be linked above 1 percent of the 2015 8-hour ozone NAAQS to downwind nonattainment and maintenance receptors (*see* 87 FR 9553 n.40). As a result, EPA deferred acting on Alabama's SIP submission when it published a supplemental

On April 21, 2022, Alabama withdrew its August 20, 2018, SIP revision.<sup>4</sup> Additionally, on that same day, Alabama provided EPA a new SIP revision to address the CAA interstate transport requirements for the 2015 8-hour ozone NAAQS.

According to the CAA, a SIP revision may be considered “complete” by either of two methods: (1) EPA may make a determination that a SIP is complete under the “completeness criteria” set out at 40 CFR part 51, appendix V, *see* CAA section 110(k)(1); or (2) a SIP may be deemed complete by operation of law if EPA has failed to make a completeness determination within 6 months after receipt of the State’s SIP submission, *see* CAA section 110(k)(1)(B).

EPA evaluated the SIP revision that Alabama sent on April 21, 2022, for completeness pursuant to the criteria in 40 CFR part 51, appendix V, and concluded it is an incomplete SIP submission. On June 15, 2022, EPA sent a letter to Alabama explaining the Agency’s incompleteness determination. This letter is included in the docket for this action.<sup>5</sup>

Where EPA determines that a SIP revision does not meet the Appendix V completeness criteria, the state shall be treated as not having made the submission. *See* CAA section 110(k)(1)(C). Accordingly, EPA is finding that Alabama has failed to submit a complete SIP revision addressing the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 8-hour ozone NAAQS. Notwithstanding this finding, and the associated obligation of EPA to promulgate a FIP for Alabama within two years of this finding, EPA intends to continue to work with Alabama in order to provide assistance as necessary to help the State develop an approvable SIP revision.<sup>6</sup>

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proposal in 2021 to approve four other southeastern states’ good neighbor SIP submissions using the updated modeling. *See* 86 FR 37942, 37943 (July 19, 2021). Additional modeling confirmed the results of the 2020 modeling. In its February 22, 2022, notice, EPA announced that the Agency was withdrawing its 2019 proposed approval and was proposing disapproval of that submission instead. *See* 87 FR 9545 (February 22, 2022).

<sup>4</sup> See the docket for this rulemaking for a copy of Alabama’s April 21, 2022, withdrawal letter.

<sup>5</sup> While this letter is included in the docket for this action, and explains the deficiencies in the April 21, 2022, document, EPA is not reopening its determination of incompleteness in this action.

<sup>6</sup> EPA notes that there is no mechanism for the State to rescind the prior withdrawal of its August 20, 2018, submission. *See, e.g.*, 80 FR 39961, 39964-65 (July 13, 2015); *see also* Letter, from Beverly H. Banister, USEPA Region 4, to Sheila Holman, NCDENR, “Response to North Carolina’s June 26, 2015 Letter Seeking to Rescind the September 3, 2014 Withdrawal of the 2008 Ozone Infrastructure State Implementation Plan Certification Regarding Interstate Transport” (June 30, 2015) (EPA-HQ-OAR-2012-0943-0062) (finding rescission of SIP withdrawal to

### **III. Finding of Failure To Submit for Failing To Make an Interstate Transport SIP**

#### **Submission for the 2015 Ozone NAAQS**

As explained in Section II of this preamble, EPA finds the Alabama has not submitted a complete interstate transport SIP revision to meet the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2015 8-hour ozone NAAQS.

### **IV. Environmental Justice Considerations**

This notice makes a procedural finding that Alabama has failed to submit a SIP revision to address CAA section 110(a)(2)(D)(i)(I) for the 2015 ozone NAAQS. EPA did not conduct an environmental analysis for this action because it would not directly affect the air emissions of particular sources. Because this action will not directly affect the air emissions of particular sources, it does not affect the level of protection provided to human health or the environment. Therefore, this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

### **V. Statutory and Executive Order Reviews**

#### *A. Executive Orders 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act. This final action does not establish any new information collection requirement apart from what is already required by law. This finding relates to the requirement in the CAA for states to submit SIPs under section 110(a)(2)(D)(i)(I) of the CAA for the 2015

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constitute an incomplete SIP revision and “inappropriate” where the withdrawal was relied upon by plaintiffs and EPA in resolving deadline-suit litigation).

ozone NAAQS.

*C. Regulatory Flexibility Act (RFA)*

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553 or any other statute. This action is not subject to notice and comment requirements because the agency has invoked the APA “good cause” exemption under 5 U.S.C. 553(b).

*D. Unfunded Mandates Reform Act of 1995 (UMRA)*

This action does not contain any unfunded mandate as described in UMRA 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This action finds that Alabama has failed to complete the requirement in the CAA to submit a SIP under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS. No tribe is subject to the requirement to submit a transport SIP under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS. In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that EPA has reason to believe may disproportionately affect

children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is a finding that Alabama has failed to submit a complete SIP that satisfies interstate transport requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS and does not directly or disproportionately affect children.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that Alabama has failed to submit a complete SIP that satisfies the interstate transport requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2015 ozone NAAQS, this action does not adversely affect the level of protection provided to human health or the environment.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60**



**DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: June 15, 2022.

**Daniel Blackman,**  
*Regional Administrator,*  
*Region 4.*

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